

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has its own community of interest and is within the credit union's local service area. In this section, local service area generally consists of one or more contiguous political subdivisions [shall mean an area] that are [is] within reasonable proximity of a credit union's offices, [office and allows members to be realistically served from that office.] Political subdivision has the meaning assigned by TEX. LOCAL GOV'T CODE §172.003(3). For purposes of field of membership, the Group as a whole will be considered to be within the local service area when:

- (1) a [A] majority of the persons in the Group live, work, or gather regularly within the local service area;
- (2) the [The] Group's headquarters is located within the local service area; or
- (3) the [The] persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area.

The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing to serve a larger group or there are other operational or management concerns.

(b) Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:

- (1) members of the family or household of a member of the Group;
- (2) volunteers performing services for or on behalf of the Group;
- (3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;
- (4) spouses of persons who died while in the Group;
- (5) employees of the credit union;
- (6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.

(c) Multiple-groups.

(1) The commissioner may approve a credit union's original articles of incorporation and bylaws or a request for approval of an amendment to a credit union's bylaws to serve one or more communities of interest or a combination of types of communities of interest.

(2) In addition to general requirements, special requirements pertaining to multiple-Group applications may be required before the commissioner will grant such a certificate or approve such an amendment.

(A) Each Group to be included in the proposed field of membership of the credit union must have its own community of interest.

(B) Each associational or occupational Group must individually request inclusion in the proposed credit union's field of membership.

(d) Overlap protection.

(1) The commissioner will only consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap for a Group of 3,000 members or more.

(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility,

complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.

(3) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." Exclusionary clauses are rarely appropriate for inclusion on a geographic community of interest.

(4) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:

(A) whether the overlap is incidental in nature, i.e., the group(s) in question is so small as to have no material effect on the overlapped credit union;

(B) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;

(C) whether the overlapped credit union provides requested service;

(D) the financial effect on the overlapped credit union;

(E) the desires of the group(s); and

(F) the best interests of the affected group(s) and the credit union members involved.

(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.

(6) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.

(e) Underserved communities.

(1) All credit unions may include underserved areas or areas designated as a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts) in their fields of membership, without regard to location. More than one credit union can serve the same underserved community [area].

(2) Once an underserved community [area] has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the area under this subsection [community]. [For the purposes of this subsection, service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loan proceeds are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, and an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or a credit union's Internet website.]

(3) A credit union desiring to add an underserved community [area] must document that the area [community] meets the applicable definition in §91.101 (relating to Definitions and Interpretations). In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository

needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved area.

(f) Parity with Federal Credit Unions.

Credit unions will be allowed to have, at a minimum, at least as much flexibility as federal credit unions have in field of membership regulation. If a credit union proposes a type of Group that the National Credit Union Administration has previously determined meets the Federal requirements, the commissioner shall approve the application unless the commissioner finds that the credit union has not demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership.

(g) Application.

In order to request the approval of the commissioner to add a Group to its bylaws, a credit union must submit a written application to the Department. The applicant credit union shall have the burden to show to the Department such facts and data that support the requirements and considerations in this rule. In reviewing such application, the commissioner shall consider:

- (1) Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;
- (2) The ability of credit unions to maintain parity and to compete fairly with their counterparts;
- (3) Service by the credit union that is responsive to the convenience and needs of prospective members;
- (4) Protection for the interest of current and future members of the credit union; and
- (5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.